

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

LESTER RAY TOLIVER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-2956-JTF-atc
	)	
RN HICKEY, et al.,	)	
	)	
Defendants.	)	
	)	

---

**ORDER GRANTING EXTENSION OF TIME TO AMEND THE COMPLAINT;  
AND DENYING MOTIONS TO FORFEIT THE CASE (ECF NOS. 12 & 13)**

---

On December 31, 2020, Plaintiff Lester Ray Toliver filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) When Toliver filed the complaint, he was confined at the West Tennessee Detention Facility (the “WTDF”) in Mason, Tennessee. (ECF No. 1 at PageID 2; ECF No. 1-3 at PageID 36.) On March 26, 2021, the Court granted leave to proceed *in forma pauperis* and assessed the \$350 civil filing fee. (ECF No. 4.) On December 29, 2022, the Court (1) dismissed the complaint for failure to state a claim to relief, (2) granted leave to amend within twenty-one days, and (3) directed Toliver to notify the Court in writing of Toliver’s current address. (ECF No. 8 (the “Screening Order”).)

Toliver’s deadline to amend the complaint expired on Thursday, January 29, 2023. On January 17, 2023, Toliver filed (1) a motion for extension of time to amend the complaint (ECF No. 9 (the “Motion For Extension”)) and (2) a notice of his current address at the Shelby County Correctional Facility (the “SCCF”) in Memphis, Tennessee (ECF No. 10). The Motion For Extension said that Toliver’s “legal mail, documents, [and] medical records [collectively, the ‘Documents’] unfortunately w[ere] unretainable [sic].” (ECF No. 9 at PageID 74.) The Motion

For Extension said that, “[d]ue to those [D]ocuments [being] missing[,] Toliver would be incapable of sufficiently stating truthfully of [sic] particular events that occurred in the original complaint without having each original supplement.” (*Id.*) Due to Toliver’s difficulties in accessing the Documents after his transfer to the SCCF, the Court granted the Motion For Extension on April 7, 2023. (ECF No. 11.) The Court granted Toliver leave to amend on or before April 21, 2023. (*See id.* at PageID 80.)

On May 5, 2023, Toliver filed a “motion to fortified [sic] civil case”, seeking to “fortified”<sup>1</sup> the case unless Toliver could receive an extension of time to amend the complaint. (ECF No. 12.) Toliver seeks “one last opportunity to amend the complaint[,] based on the circumstances.” (ECF No. 12 at PageID 81.) He represents that he received the Court’s April 7, 2023 Order (ECF No. 11) on April 17, 2023. (ECF No. 12 at PageID 81.) He claims that the SCCF, where he is confined, is “hindering Plaintiff from being able to proceed with Plaintiff’s civil case ... [due to] lack of access to [the] law library.” (*Id.*) Toliver says that “if Plaintiff cannot receive one last opportunity to amend the complaint, Plaintiff voluntarily requests to fortified [sic] this civil matter.” (*Id.*)

For good cause shown because of (1) mail delays in Toliver receiving the Court’s April 7, 2023 Order and (2) Toliver’s representations about difficulties accessing the SCCF’s law library, Toliver is GRANTED leave to amend ON OR BEFORE FRIDAY, JUNE 30, 2023. No further applications for extensions to amend will be granted to the extent those applications are based on Toliver’s alleged difficulties in accessing the SCCF’s law library, without prior demonstration that Toliver (1) has unsuccessfully made good faith efforts to access the SCCF’s law library and (2) needs law library access to amend the complaint.

---

<sup>1</sup> The Court construes Toliver’s use of “fortified” to mean “forfeit.” Toliver’s June 5, 2023 “motion to forfeit” seeks to correct the May 5, 2023 motion’s spelling of “forefeit”, although still incorrectly. (ECF No. 13 at PageID 84 (saying that “Toliver had an incorrect spelling [of] the vocabulary word forfeit”).)

The Court having granted Toliver an extension of time to amend, Toliver's motions to forfeit the case (ECF Nos. 12 & 13) are DENIED as moot, subject to Toliver's right to re-file a motion to voluntarily dismiss the case.

IT IS SO ORDERED, this 9<sup>th</sup> day of June, 2023.

/s/ John T. Fowlkes, Jr.

JOHN T. FOWLKES, JR.

UNITED STATES DISTRICT JUDGE